

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PAULA DIANE ROBINSON,  
APPELLANT**

**vs.**

**CITY OF KANSAS CITY, MISSOURI,  
RESPONDENT**

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DOCKET NUMBER WD77600

DATE: DECEMBER 23, 2014

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Appeal from:

The Circuit Court of Clay County, Missouri  
The Honorable Janet L. Sutton, Judge

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Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard, J. and Mark D. Pfeiffer, J.

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Attorneys:

Stephen K. Nordyke, for Appellant

George S. Diegel, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PAULA DIANE ROBINSON, APPELLANT**

**v.**

**CITY OF KANSAS CITY, MISSOURI, RESPONDENT**

WD77600

Clay County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Victor C. Howard, J. and Mark D. Pfeiffer, J.

On January 27, 2007, Paula Robinson was driving north on North Brighton Road in Clay County, Missouri when a southbound vehicle driven by Joseph Nixon skidded on ice, crossed the center line, and struck Appellant's vehicle. In 2008, Appellant filed suit in the Circuit Court of Clay County against the driver and the City of Kansas City. With regard to the City, Appellant claimed that a water line operated by the City had broken due to the negligence of the City and had caused water to flow onto the roadway and freeze at the location where the accident had occurred. She claimed that various negligent acts on the part of the city had caused or contributed to cause the accident.

In late 2013, the City filed a motion for leave to file an amended answer to Appellant's petition, allowing it to add as an additional affirmative defense an assertion that Appellant had failed to comply with the notice requirement of § 82.210. The City also filed a motion for summary judgment based upon Appellant's failure to comply with that statutory notice requirement. The trial court eventually granted the City leave to amend its petition, and on the same day the petition was filed, the court granted the City's motion for summary judgment.

**REVERSED AND REMANDED.**

**Division Two holds:**

- (1) A plaintiff's failure to comply with the notice requirement of § 82.210 is an affirmative defense that must be raised by the defending city.
- (2) Under the circumstances presented, while the City, with little to no excuse waited an extensive period of time before attempting to raise its affirmative defense, and while this Court might not have found an abuse of discretion had the trial court denied the motion to amend, the trial court's decision to grant leave to amend with trial set a sufficient time away for Appellant to respond and prepare for trial does not shock our sense of justice or indicate a lack of careful

consideration on the part of the trial court. In short, the trial court did not abuse its discretion in allowing the City to amend its answer.

(3) When an amended pleading has been filed by leave of the court, Rule 55.33(a) provides that the opposing party is to be afforded ten days in which to respond. Having granted leave to file the amended answer, before entering summary judgment, the trial court should have afforded Appellant at least ten days to respond to the amended answer and/or to amend her response to the motion for summary judgment, which had principally argued that the affirmative defense of notice under § 82.210 had been waived by the City's failure to plead it in its answer.

(4) Because of the trial's error in failing to allow Appellant time to respond to the City's amended answer, the trial court's judgment is reversed, and the cause is remanded to the trial court for further proceedings. The trial court is directed to afford Appellant at least ten days in which to file a response to the amended answer and/or to amend her response to the motion for summary judgment before ruling upon the motion for summary judgment or conducting any further proceedings in the matter.

Opinion by Joseph M. Ellis, Judge

Date: December 23, 2014

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